IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM No.3089 of 2007 &
CWP NO.18232 of 2006

DATE OF DECISION: 6.3.2007

Jagsir Singh ..Petitioner.

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. Shailendra Sharma, Advocate
for the petitioner.

J.S. Khehar, J. (oral)

The petitioner was inducted into the service of the police department as a constable in 1989. For some period in the year 1991, the petitioner remained absent from duty. In fact, the pleadings of this case, as well as, the charge sheet issued to the petitioner reveal, that the petitioner was absent from duty from 22.8.1991 to 25.9.191 and thereafter again from 25.9.1991 onwards, whereupon report No.36 was entered in the register on 12.11.1991, depicting absence of the petitioner from service.

On 4.1.1992 articles of charge were framed against the petitioner solely on the allegation that the petitioner had remained absent from duty for the period referred to above. An Inquiry Officer was appointed, who recorded the statements of witnesses. Although the petitioner was served and he participated in the departmental enquiry in

the first instance, he did not cross examine any of the witnesses produced before the Inquiry Officer. Consequent upon the recording of the entire evidence, a charge sheet was framed against the petitioner in terms of the provisions of the Punjab Police Rules, 1934, whereupon the petitioner was again summoned to appear in the departmental proceedings. The aforesaid charge sheet was also served upon the petitioner, as is apparent from the `zimini' order passed on 15.3.1993. Learned counsel for the petitioner, during the course of hearing, acknowledges the fact, that the petitioner was served with the charge sheet, yet the petitioner did not appear in the enquiry proceedings after 15.3.1993.

Although, it was open to the Inquiry Officer to proceed against the petitioner in the departmental enquiry ex parte on account of the absence of the petitioner, yet, before taking the aforesaid decision, the Inquiry Officer sought the approval of the punishing authority to proceed against the petitioner ex parte. This factual position is recorded in the `zimni' order passed in the departmental enquiry on 14.5.1993. Thereafter, since the petitioner did not participate in the enquiry proceedings, he was proceeded against ex parte. In the enquiry report dated 18.5.1993 (Annexure P-6), the Inquiry Officer arrived at the conclusion that the charges levelled against the petitioner had been duly proved. On the basis of the enquiry report, the punishing authority by an order dated 7.4.1994 (Annexure P-8) dismissed the petitioner from service.

Dissatisfied with the order passed by the punishing authority dated 7.4.1994, the petitioner preferred an appeal. The appeal preferred

by the petitioner was accepted by the Deputy Inspector General of Police, Faridkot Range, Bathinda, inasmuch as, the appellate authority by an order dated 31.12.2004, taking a lenient view in the matter, ordered the reinstatement of the petitioner.

After the petitioner was reinstated into service, the Director General of Police, Punjab, issued a show cause notice to the petitioner dated 9.11.2005. After re-examining the matter in its totality, including the reply submitted by the petitioner, the Director General of Police, Punjab, arrived at the conclusion, that the action of the petitioner in remaining wilfully absent from duty, could not be overlooked as the same would cause indiscipline in the disciplined force. Accordingly, relying on various judgments rendered by the Apex Court, the Director General of Police, Punjab, by the impugned order dated 17.7.2006 (Annexure P-12) set aside the order passed by the appellate authority, and thereby confirmed the order passed by the punishing authority.

Through the instant writ petition, the petitioner has impugned the order passed by the Director General of Police, Punjab, dated 17.7.2006 (Annexure P-12). The solitary contention advanced by the learned counsel for the petitioner is, that the Inquiry Officer did not record any evidence after the framing of the charges, and as such, the entire enquiry proceedings initiated against the petitioner, stand vitiated. It is not possible for us to accept the instant contention of the learned counsel for the petitioner. Our aforesaid conclusion is based on Rule 16.24 of the Punjab Police Rules, 1934. Rule 16.24(1)(i) to (vii) of the aforesaid rule, which is relevant for the present controversy. is being

reproduced hereunder:-

> "16.24. Procedure in departmental enquiries.- (1) The following procedure shall be followed in departmental enquiries:-
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> (i) The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. That officer shall record and read out to the accused officer a statement summarising the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded. A copy of the statement will also be supplied to the accused officer free of charge.
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> (ii) If the accused police officer at this stage admits the misconduct alleged against him, the officer conducting the enquiry may proceed forthwith to frame a charge, record the accused officer's plea and any statement he may wish to make in extenuation and to record a final order, if it is within his power to do so, or a finding to be forwarded to an officer empowered to decide the case. When the allegations are such as can form the basis of a criminal charge, the Superintendent shall decide at this stage, whether the accused shall be tried departmentally first and judicially thereafter.
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> (iii) If the accused police officer does not admit the

misconduct, the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation, as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary, and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate, and is signed by the person making it. This statement shall also be read out to the accused officer and he shall be given an opportunity to take notes. The accused shall be bound to answer any questions which the enquiring officer may see fit to put to him with a view to elucidating the facts referred to in statements or documents brought on the record as herein provided.

(iv) When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him, or

recommended his discharge to the Superintendent or other officer, who may be so empowered, or (b) proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(v)The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, in no case exceeding forty-eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witness whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defence witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be recorded by any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers, except such as form part of the record of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of

documents to the accused shall be subject to the ordinary rules regarding copying fees.

(vi)At the conclusion of the defence evidence or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for tis preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him, arising out of the charge, the recorded evidence, or his own written statement.

(vii)The enquiring officer shall proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into consideration the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be taken into account by the officer before passing orders in the case."

Under the procedure envisaged for departmental proceedings in the police department, the Inquiry Officer records evidence, in the first instance, and thereafter, a charge sheet is framed, which is approved by the competent authority, as was the case for the petitioner as well. After the framing of the charges, based on evidence recorded, wherein the petitioner had also been afforded an opportunity of cross-examining all the witnesses (who had appeared before the Inquiry Officer) the Inquiry Officer submitted the enquiry report dated 18.5.1993. There would have been merit in the contention of the learned counsel for the petitioner, if the petitioner, when he was summoned after the charge sheet had been approved by the punishing authority, had entered appearance before the Inquiry Officer and produced his defence. Since it is acknowledged by the learned counsel for the petitioner, that though the petitioner was duly served summons to appear before the Inquiry Officer, issued vide zimni order dated 15.4.1993, he did not choose to do so. It is clear, that the petitioner did not avail of the opportunity available to him to present his case before the Inquiry Officer. It is also apparent from the pleadings of this case, specially the zimni orders collectively appended to this petition as Annexure P7, that the petitioner was proceeded against ex parte by the Inquiry Officer, only after an express approval to do so was accorded by the punishing authority i.e. the Senior Superintendent of Police, Faridkot. In the circumstances, as have been noticed hereinabove, it is not possible for us to accept that adequate evidence was not produced before the Inquiry Officer , on the basis of which a finding of guilt could be recorded against the petitioner, nor is it possible to conclude, that the

petitioner was not afforded an opportunity either to cross-examine the witness produced before the Inquiry Officer or to lead his own evidence in defence.

For the reasons recorded hereinabove, we find no infirmity in the proceedings conducted against the petitioner, which eventually led to his dismissal from service.

Dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

March 06, 2007.
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